KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $681 million in 2012, down $172 million from 2011. U.S. goods exports in 2012 were $881 million, up 6.7 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.6 billion, down 7.0 percent. Kazakhstan is currently the 80th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $9.2 billion in 2011 (latest data available), down from $9.4 billion in 2010.

WTO Accession

Kazakhstan intensified its work on negotiations for its accession to the WTO in 2012, advancing both technical and substantive aspects of the negotiations. The accession package under negotiation consists of: (1) schedules of goods and services market access commitments; (2) a Working Party report and Protocol of Accession recording how Kazakhstan will implement WTO provisions; and (3) commitments on domestic agricultural support and export subsidies.

The United States and Kazakhstan signed a WTO bilateral agreement on market access for goods on November 22, 2010, and a market access agreement on services on September 21, 2011. Kazakhstan concluded bilateral market access negotiations on goods and services with almost all WTO Members participating in its Working Party during 2011, and the WTO Secretariat spent most of 2012 consolidating these agreements into draft schedules.

During 2012, Kazakhstan's Working Party met four times, developing a revised draft Working Party report to reflect the changes that have taken place in Kazakhstan's trade regime and legal framework as a result of its entry into a customs union (CU) with the Russian Federation and Belarus. Kazakhstan provided revised legislation and relevant CU legal acts that implement WTO agreements in many of the key areas affected by Kazakhstan's participation in the CU, *e.g.*, customs practices, technical barriers to trade, and import licensing. Other major issues that remain the subject of negotiations include: Kazakhstan's localization policies in procurement by state-owned and state-controlled enterprises; trade-related investment measures that Kazakhstan enforces in the oil, gas, and mining industries; Kazakhstan's agricultural policies (including domestic support, export subsidies, value-added taxes on imports, and tariff-rate quotas (TRQs)); Kazakhstan's commitments on SPS measures; and adjustments to Kazakhstan's tariff commitments in light of its membership in the CU.

IMPORT POLICIES

Kazakhstan implemented a common external tariff (CET) with Belarus and the Russian Federation on January 1, 2010. In early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational body charged with implementing external trade policy for CU members and with coordinating economic integration among CU Parties with the goal of establishing a Eurasian Union by 2015. They adopted a harmonized customs code, which is implemented through national customs laws. These countries are also in the process of forming a Common Economic Space, which is intended to be a step toward further economic integration. Many agreements for the Common Economic Space are still being negotiated. The first 17 came into force on January 1, 2012. Establishment of the CU also introduced new customs control procedures for importers from non-EEC countries. Generally, industry reports that the cost of importing has gone up due to an increase in fees for registration and import duties on some products, as well as new licensing requirements for numerous goods. Industry has also cited Kazakhstan's transition to new CU policies and procedures as a source of additional delay and uncertainty in the customs clearance process.

As a result of its membership in the CU, Kazakhstan increased the tariff rate on some 5,400 tariff lines, and its average import tariff in 2010 increased from 6.7 percent to 9.2 percent. In July 2012, CU countries adopted a new common external tariff (CET) that reflects Russia's tariff commitments that became effective when it became a WTO Member in August 2012. Under the new CET, approximately 90 percent of Kazakhstan's applied tariff rates remained the same, while the applied rates for 1000 lines, including food products, household electronics, carpets, apparel, chemical substances, iron ore, raw materials, and lubricating oils decreased.

Under the CET, Kazakhstan has applied tariff rates of zero percent for approximately 12 percent of individual tariff lines, including light aircraft with fewer than 50 passenger seats, high-speed railway locomotives, spare parts for certain types of vehicles, aircraft engines, spare parts for aircraft, agricultural equipment, food products such as tropical fruits, children's food, coffee, cacao beans, and certain types of metals. In addition, imported equipment and spare parts designated for priority investment projects under the government's industrialization program are exempted from customs duties.

According to CU regulations, Kazakhstan is allowed to apply tariffs that differ from the CET on 72 tariff lines, but those tariffs must be harmonized with the CET rate by 2015. The 72 tariff lines cover pharmaceuticals, medical equipment, and prefabricated buildings. In addition, a CU Party can increase tariffs for up to six months on selected goods without the consent of the other CU Parties. In 2012, Kazakhstan introduced protective tariffs on candy and cotton wool which will be applied through September 2014.

In 2010, Kazakhstan established tariff-rate quotas on imports of poultry, beef, and pork, as part of its obligations within the CU. In 2012, U.S. exporters became increasingly concerned about the trade-limiting effects of these quotas and the manner in which they are calculated and distributed. In December 2012, Kazakhstan established revised in-quota quantities for beef, pork, and poultry that fell short of the level of U.S. traditional exports to that market.

Kazakhstan increased the number of goods subject to import or export licensing in connection with its membership in the CU. Precious metals and stones, documents from national archives, and items of cultural value are among the products now subject to export licensing. Any product incorporating encryption technology, even if only for everyday commercial applications, is subject to import and export licensing procedures. On the other hand, as a result of CU implementation of Russia's WTO commitments, Kazakhstan is in the process of eliminating some of its import licensing requirements for alcoholic beverages and pharmaceuticals. Kazakhstan maintains a ban on the export of light distillates, kerosene, and gasoline.

In terms of regional trade relations beyond the CU, Kazakhstan signed a Free Trade Zone treaty with Commonwealth of Independent States countries in October 2011. The treaty came into force in Kazakhstan on December 8, 2012.

Although Kazakhstani officials have attempted to reform customs agencies, industry asserts that customs administration and procedural implementation remains a significant barrier to trade. In 2010, Kazakhstan ratified the 1990 Istanbul Convention on temporary admission, which will help bring its procedures for temporary admission of goods into conformity with international standards.

GOVERNMENT PROCUREMENT

The lack of transparency and efficiency in government procurement remains a major challenge for local and foreign companies. The government recognizes this, and is taking steps to streamline its procurement process. Kazakhstan moved to an electronic procurement system on July 1, 2012. Resident and non-resident companies may participate in electronic tenders once they receive an electronic signature from the Ministry of Transport and Communication. The system's performance to date has been uneven.

The government's strong support for increased use of local content adversely impacts U.S. suppliers and is a subject of intense discussions in Kazakhstan's WTO accession process. In 2009 and 2010, Kazakhstan amended its Law on Government Procurement to increase the percentage of local content required in government procurement and purchases not for government use by state-owned and state-controlled enterprises, which applies to both domestic and foreign suppliers. A supplier must receive a certificate from the Ministry of Industry and New Technologies that confirms the extent of the goods or service's local content. Starting January 1, 2014, companies from EEC countries will enjoy local content treatment for the goods and services that they supply.

The National Welfare Fund and government-owned holding company, Samruk-Kazyna, accounts for at least 16 percent of Kazakhstan's GDP. Through share ownership, Samruk-Kazyna manages some of Kazakhstan's largest national companies, such as Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electricity transmission company), and their subsidiaries. These enterprises are subject to the Samruk-Kaznya local content requirements. Samruk-Kaznya and the organizations in which the Fund owns, directly or indirectly, 50 percent or more of the voting shares, conduct procurement of goods and services in accordance with the Rules of Procurement, approved by the Board of Directors of the Fund on May 26, 2012. These Rules stipulate criteria for the evaluation of bids and provide for price preferences for up to 20 percent for locally produced goods and services.

Kazakhstan is not a member of the WTO Government Procurement Code.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To facilitate its WTO accession and attract foreign investment, Kazakhstan is modernizing its legal regime for protecting intellectual property rights (IPR). In the period 2009-2011, Kazakhstan adopted several amendments to its IPR law, including the recognition of vendors that have the legal right to sell certain print and digital media. This amendment allows licensed vendors to seek damages from unauthorized dealers selling pirated versions of that media. Kazakhstan also amended its patent law to clearly define types of patent infringements and establish accountability for patent infringers, as well as to define the relationship between an employer and an employee with respect to an employee's invention. In January 2012, Kazakhstan adopted amendments to IPR laws targeting piracy over the Internet. Over the course of 2012, local authorities enforced the new provisions and stopped the activity of several websites identified as distributors of pirated content.

Kazakhstan has taken steps towards implementing international IPR standards. For example, the government introduced amendments to its trademark legislation with a view to complying with the WTO TRIPS Agreement. Kazakhstan has also ratified 16 of the 24 treaties endorsed by the World Intellectual Property Organization (WIPO). In 2010, Kazakhstan joined the Madrid Agreement on the Repression of False or Deceptive Indications of Source on Goods and the Agreement Concerning the International Registration of Trademarks. It also ratified the Nairobi Treaty on the Protection of the Olympic Symbol.

In 2011, Kazakhstan ratified the WIPO Patent Law Treaty. In June 2011, Kazakhstan ratified the Agreement of Common Economic Space on unified principles of regulation in the area of IPR protection. In 2012, Kazakhstan ratified the Singapore Treaty on the Law of Trademarks and the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations.

Pursuant to statutes enacted in November 2005 that authorized stronger penalties, authorities have conducted numerous raids against distributors of pirated products. The government's efforts have helped to expand the Kazakhstani market for licensed, non-infringing products. Customs controls need to be applied more effectively against imported IPR-infringing goods. In addition, although civil courts have been used effectively to stem IPR infringement, judges often lack technical expertise in the area of IPR, which is a significant obstacle to further improvement in Kazakhstan's IPR enforcement.

In terms of protection of intellectual property of innovative pharmaceuticals, Kazakhstan still lacks effective means to protect pharmaceutical test and other data against unfair commercial use, as well as disclosure. Kazakhstan, however, has stated its willingness to provide such protection as of the date of its accession to the WTO.

SERVICES BARRIERS

Telecommunications

Kazakhstani law restricts foreign ownership to 49 percent in telecommunications companies that provide long distance and international telecommunication services and that operate fixed line communication networks (cable, optical fiber, and radio relay). This restriction was addressed during bilateral negotiations with Kazakhstan within the context of its WTO accession. Kazakhstan agreed that, after a two and a half year transition period, it will remove this foreign ownership restriction for telecommunications operators, except for the country's main carrier KazakhTeleCom.

The law "On Communication" and Decree 1499 together require placing and registering Network Control Centers for very small aperture antennas within the borders of Kazakhstan. The U.S. satellite industry has expressed concerns regarding restrictions on the transport of video programming through foreign satellites, and restrictions barring foreign firms from providing these services to the government. In its WTO accession, Kazakhstan has agreed not to restrict services provided by foreign satellite operators to companies that hold a license for telecommunication services.

Other

Foreign banks and insurance companies are allowed to operate only through joint ventures with Kazakhstani companies. However, Kazakhstan has agreed to eliminate the joint venture requirement and to permit direct branching, following a transition period of 5 years after WTO accession. Kazakhstan's law also restricts foreign ownership in mass media companies, including news agencies, to 20 percent, a limitation that will still remain in force after WTO accession.

INVESTMENT BARRIERS

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. Some U.S. investors have expressed concern about certain aspects of the law, including its investment contract stability provision, the lack of clear provisions for access to international arbitration, and the narrow definition of an investment dispute. In February 2012, the law was amended to extend the deadline for the drafting and approval of "project documents" for companies in extractive industries. These documents include performance indicators and assessments of the economic feasibility of the project, which must take into the account potential Kazakhstani suppliers of goods and services, *i.e.*, the willingness of the investing firm to localize its procurements. The requirement to draft and approve project documents was introduced in the June 2010 Law on Subsoil and Subsoil Use, but not all extractive companies have managed to meet this requirement.

Approximately 70 percent of foreign direct investment in Kazakhstan is in the oil and gas sector. The government remains eager to generate foreign investment in this sector, but expanding local content requirements have created a more challenging environment for subsoil operations. Kazakhstani goods do not always fully comply with international standards, and Kazakhstani service suppliers are not always able to provide the technically complex services necessary to support projects in oil and gas sector. Companies have thus found it difficult to comply with the government's local content requirements and they report that local administrators continue to take an increasingly inflexible approach to these regulations. Government agencies led by the Ministry of Industry and New Technologies are currently drafting an Action Plan on the Enhancement of Local Content in Procurements for Major Subsoil Users and Strategic Mining and Petroleum Companies, which is scheduled for submission to the Presidential Administration in the first quarter of 2013. The Action Plan will require local content to comprise 50 percent of front-end engineering and design (FEED) work; ban the export of geological information (core samples, rocks, and reservoir fluids); and require the nomination of Ministry of Industry and New Technologies representatives onto the boards of directors of key subsoil use projects. The Foreign Investors Council has been given a draft of the Action Plan for comment.

On June 25, 2010, the government established the National Agency for Local Content Development to increase local content alternatives to imports, monitor subsoil procurement procedures, and assist local companies to provide competitive goods and services. The June 2010 Law on Subsoil and Subsoil Use established strict local content requirements and harsh penalties for failure to meet them, including the potential cancellation of contracts. Additionally, the Subsoil Law included a preemption clause that guarantees Kazakhstan the right of first refusal when a party seeks to sell any part of its stake in a subsoil project. The law allows the Government to amend or terminate existing subsoil contracts deemed to be of "strategic significance." In April 2012, the government issued a new decree that listed 361 hydrocarbon fields and mineral deposits as having "strategic significance."

The June 2010 Law on Subsoil and Subsoil Use also authorizes the government to amend contracts if it determines that the actions of a subsoil user could lead to a substantial change in Kazakhstan's economic interests or could threaten Kazakhstan's national security. The Law provides no guidance on how to determine whether there is a "substantial change in economic interests" or whether there is a threat to national security. While no contract has to date been annulled on either of these grounds, the Ministry of Oil and Gas (MOG) can and does annul contracts when subsoil users fail to meet their contractual obligations (*e.g.*, no well drilled during exploration stage or violation of local content requirements). The MOG annulled 28 subsoil contracts in 2010 for failure to meet contractual obligations, and in 2011 sent subsoil users a total of 169 notifications on violations of contractual obligations (which can, but do not necessarily, result in cancellation of contracts). In April 2012, the National Agency for Local Content Development accused 38 mining companies of violating local content regulations, and threatened to impose penalties, including unilateral termination of subsoil use contracts.

In 2010, the government reintroduced a duty on the export of crude oil that triggered a $1 billion dispute with the consortium of international oil companies operating the Karachaganak condensate field. In 2011, the government determined that export duties do not apply to Production Sharing Agreements, which have tax stability clauses and thus settled the dispute.

On January 9, 2012, the President of Kazakhstan signed the Law on Natural Gas and Gas Supply to regulate gas transportation, distribution, and pricing. The law also introduces a national gas operator which is entitled to exercise the state's preemptive right to buy gas from subsoil license holders at "cost plus 10 percent." The new law's stated aims include ensuring Kazakhstan's energy and environmental security, guaranteeing uninterrupted gas supply to as many households as possible, increasing gas supply and consumption, and expanding the utilization and consumption of associated gas within Kazakhstan. International oil companies with preexisting subsoil contracts fear that the government will use the Gas Law as an impetus to force companies to renegotiate terms related to existing associated gas arrangements.

For all subsoil projects, 1 percent of the project budget must be earmarked for training programs and workforce development, including overseas assignments with the lead operator. When seeking to appoint certain specialists, international oil companies must consult a list of qualified Kazakhstani specialists included in a database maintained by the Ministry of Industry and New Technologies. As a result of amendments to the Expatriate Workforce Quota and Work Permit Rules, from January 1, 2012, only 30 percent of company executives and 10 percent of engineering and technical personnel may be foreign nationals. These requirements impose significant burdens on foreign subsoil users. (Kazakhstan's three largest hydrocarbon projects – Tengiz, Karachaganak, and Kashagan – have been exempted from these requirements until 2015).

In October 2012, the Procurator General's Office proposed tightening control over the employment of foreign nationals by revising the current procedures for issuing expatriate workforce quotas, granting regional labor departments control over local content requirements in the workforce, and creating a register of employers violating these requirements.

OTHER BARRIERS

Kazakhstan also has a burdensome tax monitoring system, which companies report requires them to maintain excessively large staffs to deal with the cumbersome rules and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable.

Corruption at many levels of government is also seen as a barrier to trade and investment in Kazakhstan. It reportedly affects nearly all aspects of doing business in Kazakhstan, including customs clearance, registration, employment of locals and foreigners, payment of taxes, and the judicial system.